

06-0633
Locally Assessed Property
Signed 12/06/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	INITIAL HEARING ORDER
)	
Petitioner,)	Appeal No. 06-0633
)	Parcel No. #####
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	Residential
SALT LAKE COUNTY,)	Tax Year: 2005
UTAH,)	
)	Judge: Phan
Respondent.)	

This Order may contain confidential “commercial information” within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37 the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this order, specifying the commercial information that the taxpayer wants protected.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE, Certified General Appraiser,
Salt Lake County

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization. This matter was argued in an Initial Hearing pursuant to the provisions of Utah Code Ann. Sec. 59-1-502.5, on October 16, 2006. Petitioner is appealing the assessed value as established for the subject property by Salt Lake County Board of Equalization. The lien date at issue is January 1, 2005.

APPLICABLE LAW

All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provide by law. (Utah Code Ann. Sec. 59-2-103 (1).)

“Fair market value” means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. (Utah Code Ann. 59-2-102(12).)

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board. . . . (4) In reviewing the county board’s decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

Except as provided in Subsection (3), if, during a calendar year, property sustains a decrease in fair market value that is caused by access interruption, the owner of the property may apply to the county board of equalization for an adjustment in the fair market value of the owner’s property as provided in Subsection (4). (Utah Code Sec. 59-2-1004.6(2).)

For purposes of this section “access interruption” means interruption of the normal access to or from property due to any circumstance beyond the control of the owner, including: (a) road construction; (b) traffic diversion; (c) an accident; (d) vandalism; (e) an explosion; (f) fire; (g) a flood; (h) a storm; (i) a tornado; (j) winds; (k) an earthquake; (l)

lightning; (m) any adverse weather event; or (n) any event similar to the events described in this subsection (1), as determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act. (Utah Code Sec. 59-2-1004.6(1).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

DISCUSSION

The subject property is parcel no. ##### and is located at ADDRESS, in CANYON. The Salt Lake County Assessor's Office had originally set the value of the subject property, as of the lien date at \$\$\$\$\$. The Salt Lake County Board of Equalization reduced the value to \$\$\$\$\$.

The subject property consists of 1.03-acres of land improved with a recreation cabin. The outer portion of the structure is 14 years old and has 860 above grade square feet. However, the interior construction has not been finished and the cabin is being valued by the County at 50% complete. Additionally Petitioner has been constructing the cabin with used materials. There is water to the property, but no electricity. The property is located in the canyon recreation subdivision known as (X). This is a summer recreation area and is not near ski resorts. There is no road access to the subject property during the winter months as the road is steep and the city or county does not plow the snow. The normal access to the property by road is during the summer months only.

At the hearing, Petitioner presented three main arguments. He pointed to House Bill 45 and argued he should receive property tax relief due to "access interruption," based on the fact that he does not have access to the property during the winter months. Additionally he argues that land values have not increased in the area to the extent indicated by the increase for

his property, pointing to the fact that he had been able to purchase a lot for \$\$\$\$\$. He did acknowledge there was no water to the lot and so a cabin could not be built thereon. Petitioner also points out that two of Respondent's comparables had sold fully furnished so the purchase price included a value for personal property. He provided documentation from the sellers regarding the personal property that was included with the sale.

Respondent's representative argued at the hearing that the value should be raised to \$\$\$\$\$ based on his appraisal as amended on October 5, 2006, in which he considered both a cost and sales approach. In the cost approach RESPONDENT REPRESENTATIVE concluded the value of the land was \$\$\$\$\$ and the value of the improvements \$\$\$\$\$. For the sales approach, RESPONDENT REPRESENTATIVE considered three comparable sales, all had the same type of summer only access. Additionally, RESPONDENT REPRESENTATIVE did take into account that the subject cabin interior was unfinished and considered the cabin to be constructed of poor grade to take into account the used construction material.

The first two comparables were located in the same recreational area within less than a mile of the subject property. Comparable no. 1 had sold for \$\$\$\$\$ and was superior as far as grade, condition, size, and finish. It was RESPONDENT REPRESENTATIVE conclusion, after making appraisal adjustments that the value indicated for the subject from this sale was \$\$\$\$\$. Comparable No. 2 had sold for \$\$\$\$\$ with its furnishings. RESPONDENT REPRESENTATIVE accounted for the personal property by adjusting the sale down by \$\$\$\$\$. After making appraisal adjustments for the other differences it was his conclusion that the indicated value for the subject from this sale was \$\$\$\$\$.

Comparable No. 3 had sold for \$\$\$\$\$. It was the property located further in distance from the subject. The cabin on this property had an unfinished interior, like the subject, but was old, in inferior condition and size. It also had no indoor bathroom. After making

appraisal adjustments, RESPONDENT REPRESENTATIVE concluded that the value indicated for the subject property from this sale was \$\$\$\$\$.

Upon review of the information and arguments presented by both parties in this matter the Commission concludes that value set by the County Board of Equalization was well supported and neither party met the burden to support a higher or lower value. Petitioner's argument about dry-lot sales is not persuasive. They are simply not comparable to a lot with a structure in place due to the restrictions on building in the area.

The Commission concludes that the County's appraisal is insufficient to support a higher value. First, all comparables required significant adjustment due to the unusual, unfinished nature of the subject property. Secondly, Petitioner has proven that an additional adjustment to Respondent's Comparable No. 1 is necessary due to the fact that personal property had been included in the sales price and with this adjustment, Comparable 1 begins to support the range of the County Board of Equalization value. Comparable 2 also supports the Board of Equalization value.

The buyer of Comparable No. 1 submitted a letter in which he listed the personal property items included in the sale. He indicated that they had estimated the items were worth \$\$\$\$\$ and they had taken this into consideration in the amount they had offered for this comparable. He also noted that the items were "in like new condition and didn't appear to have been used much if at all." Respondent indicated that value for the used items listed would be only around \$\$\$\$\$. Even if an adjustment of only \$\$\$\$\$ was made to this comparable the indicated value from Comparable No. 1 would be reduced to within a close range of the Board of Equalization value and a somewhat higher amount for personal property may be reasonable.

For Comparable No. 2. Respondent had made an adjustment of \$\$\$\$\$ for the personal property in his amended report, although the value of the furnishings had not been noted. Petitioner provided an email from the purchaser of Comparable No. 2, who did indicate that it

was fully furnished, but did not estimate a value other than to state the personal property “saved us several thousand dollars.” He also indicates the personal property included some antiques and an old truck. Without additional evidence, Respondent’s adjustment of \$\$\$\$ is reasonable for Comparable 2, but this sale supports the Board of Equalization value. The one sale that indicates a higher value for the subject, Comparable 3, is farther away from the subject and the cabin is older, smaller and has no indoor bathroom.

Considering Petitioner’s argument regarding House Bill 45, which is now codified at Utah Code Sec. 59-2-1004.6, “access interruption” is defined as the “interruption of the normal access to or from the property due to . . . (h) a storm; . . . (m) any adverse weather event; . . .” Because the normal access to this property is during summer only, the fact that there is no road access to the property during the winter months is not “access interruption” for purposes of the statute. The Commission would note that even if one were to argue there was an interruption of the normal access, which the Commission would consider is in error, the fact that there is no winter access is being taken into account in the County’s value. The County’s value is based on other properties with the same type of access as the subject.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2005, is \$\$\$\$.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ____ day of _____, 2006.

Jane Phan
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The agency has reviewed this case and the undersigned concur in this decision.

DATED this ____ day of _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner